

GSTA TPP 058 - Goods and services tax: Is the supply of an enterprise that includes a short-term lease of the enterprise premises a GST-free supply of a going concern?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 June 2005*



Goods and Services Tax Advice

Goods and services tax: Is the supply of an enterprise that includes a short-term lease of the enterprise premises a GST-free supply of a going concern?

Preamble

*This document is a ruling for the purposes of section 37 of the Taxation Administration Act 1953. It illustrates the principles contained in **Goods and Services Tax Rulings GSTR 2002/5 on going concerns and GSTR 2004/3 on avoidance of GST on the sale of new residential premises**. You can rely on the information presented in this document, which provides advice on the operation of the GST system.*

Answer

The supply of an enterprise including the supply of a short-term lease to the recipient may be a GST-free supply of a going concern if all the requirements of section 38-325 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) are met.

Explanation

Paragraph 38-325(2)(a) of the GST Act requires the supplier to supply to the recipient all of the things necessary for the continued operation of an enterprise.

If premises are necessary but they are not supplied because the recipient has, or is able to secure, suitable premises, paragraph 91 of GSTR 2002/5 explains that the supplier is not supplying a thing that is necessary for the continued operation of an enterprise.

If the supplier and recipient enter into a short-term lease of the premises, say for a week, the supply of the interest in the premises will be the supply of a necessary thing if it can be demonstrated that complete possession is granted to the recipient as lessee.

Note: The application of Division 165 of the GST Act has not been considered in relation to the circumstances above. Division 165 must be applied on a case-by-case basis. In each case, the Commissioner must give proper consideration to the individual circumstances of entities before

making a decision on the application of Division 165.

Application of this GST Advice

This Advice is based on GSTR 2004/3 and GSTR 2002/5. GSTR 2002/5 replaced GSTR 2001/5, which explains our view of the law as it applied from 1 July 2000. You can rely on this Advice on and from its date of issue for the purposes of section 37 of the *Taxation Administration Act 1953*. Goods and Services Tax Ruling GSTR 1999/1 explains the GST rulings system and our view of when you can rely on our interpretation of the law in GST public and private rulings.

If this Advice conflicts with a previous private ruling that you have obtained, this public ruling prevails. However, if you have relied on a private ruling, you are protected in respect of what you have done up to the date of issue of this public ruling. This means that if you have underpaid an amount of GST, you are not liable for the shortfall prior to the date of issue of this later ruling. Similarly, you are not liable to repay an amount overpaid by the Commissioner as a refund.

Commissioner of Taxation
Date

Previous Rulings/Determinations/GST Advice:

GSTR 2001/5

Subject references:

anti-avoidance
supply of a going concern
GST-free

Legislative references:

ANTS(GST)A 99 38-325
ANTS(GST)A 99 38-325(2)(a)
ANTS(GST)A 99 Subdiv 38-J
ANTS(GST)A 99 Div 165
TAA 1953 37

ATO references

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